

**REMARKS**

**I. INTRODUCTION**

Claims 1, 8, 11, 18, 21 and 22 have been amended. No new matter has been added. Thus, claims 1-22 remain pending in the present application. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

**II. THE 35 U.S.C. § 102(b) REJECTIONS SHOULD BE WITHDRAWN**

The Examiner has rejected claims 1-22 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,758,257 to Herz et al. (hereinafter “Herz”). (See 05/15/07 Office Action, p. 3).

Herz describes a system for scheduling the receipt of data from a network that distributes the data to customers. (See Herz, Abstract). The system uses an agreement matrix that characterizes the attractiveness of data, such as video programming, to each customer. From the agreement matrix, one or more virtual channels of data, customized to each customer, are determined. (See Herz col. 4, lines 18-31). Customer profiles are stored in a database and represent customers’ preferences. (See Herz col. 25, lines 7-15). The profiles are updated by determining whether the customer has watched a predicted program. If the prediction is correct no adjustment is made. However, if the customer did not watch the program, the customer profile which has characteristics closest to those of the program actually watched, is adjusted and selected as the current profile until the next time slot is encountered. In this manner, an agreement matrix is recalculated based on the customer profiles and available programs for each time slot. (See Herz col. 26, line 51 – col. 27, line 6). In particular, the agreement matrix is updated by adjusting a weight and an amount of a characteristic desired by a customer so that a prediction algorithm will output results that are consistent with the customer’s actual preferences. (See Herz col. 30, line 49 – col. 32, line 17).

Claim 1 has been amended to recite, “which is a ratio of an item being selected by a user relative to the number of times the item was offered, wherein the number of times the item was offered is greater than one.” The Examiner states that this recitation of claim 1 is disclosed in Herz at column 26, lines 51-60. (See 05/15/07 Office Action p. 4). Applicants respectfully disagree.

Herz uses a recommendation system to recommend individual items to the user. It then adjusts the recommendations based on whether or not a particular program that was recommended was actually watched. (See Herz col. 26, ll. 51-61). As the Examiner states, this creates a ratio of either 0 or 1 depending on whether the program was watched. (See 05/15/07 Office Action p. 5). While the applicant does not agree with the Examiner’s interpretation of Herz regarding the creation of a ratio, even the Examiner admits that, at most, Herz teaches a binary 0 or 1 based on whether the program was watched. In contrast, claim 1 recites a ratio that is based on a specific program being offered on more than one occasion. Claim 1 recites, “wherein the number of times the item was offered is greater than one.” So any ratio created has a denominator greater than 1, which creates an infinite number of possibilities for the ratio. Herz is limited to determining if a single show was watched. Thus, Applicants submit that Herz does not teach or suggest, “which is a ratio of an item being selected by a user relative to the number of times the item was offered, wherein the number of times the item was offered is greater than one,” as recited in claim 1. Therefore, Applicants submit that claim 1 is allowable. Because claims 2-7 depend from, and therefore include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

Independent claims 8, 11, 18, 21 and 22 have been amended to recite, “wherein the number of times the item was offered is greater than one.” Applicants submit that these claims are allowable for at least the same reasons given above with respect to claim 1. Because claims 9 and 10 depend from, and therefore include all the limitations of claim 8, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 8. Because claims 12-17 depend from, and therefore include all the limitations of claim 11, it is respectfully submitted that these claims are also allowable for at least the same

reasons given above with respect to claim 11. Because claims 19 and 20 depend from, and therefore include all the limitations of claim 18, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 18.

**CONCLUSION**

In light of the foregoing, Applicants respectfully submit that all of the now pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

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Respectfully submitted,

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